

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Verizon Telephone Companies)	WC Docket No. 02-237
)	
Section 63.71 Application To Discontinue)	
Expanded Interconnection Service Through)	
Physical Collocation)	

OPPOSITION OF THE VERIZON TELEPHONE COMPANIES¹

The Commission authorized Verizon to discontinue the provision of expanded interconnection through physical collocation in its federal tariffs because “reasonable substitutes are available” and “the public convenience and necessity will not be otherwise adversely affected.”² In the guise of petitioning for clarification, Qwest asks the Commission to interpret its state interconnection agreements in a manner that would restore these same tariff provisions that the Commission authorized Verizon to discontinue. *See* Qwest Petition for Clarification, filed November 21, 2003. Qwest’s Petition should be promptly denied because Qwest is in the wrong forum and is trying to change, not clarify, the Commission’s order based on arguments that the Commission has already rejected.

¹ The Verizon Telephone Companies are listed on Attachment A hereto.

² *Verizon Telephone Companies Section 63.71 Application To Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, FCC 03-256 ¶ 8 (rel. Oct. 22, 2003) (“*Order*”).

1. The Commission Cannot Interpret Qwest's Interconnection Agreements in this Proceeding.

Although Qwest styled its request as a petition for clarification, Qwest is actually seeking an interpretation of its interconnection agreements. For example, Qwest is asking the Commission to “specify” that “Qwest has the *contractual right* to continue to pay for collocation services at the last posted FCC tariff rate for all collocation services where the rate from an interstate tariff was *incorporated into the interconnection agreement*.” See Qwest Petition at 4 (emphasis supplied). This is not a proceeding in which the Commission can interpret Qwest's interconnection agreements because the Commission has not preempted any state commission for failing to interpret any of Qwest's interconnection agreements.

The Act gives state commissions jurisdiction over interconnection agreements, including the authority to arbitrate disputes that arise during negotiations of interconnection agreements and to approve interconnection agreements. 47 U.S.C. § 252(b), (e). The Commission's authority to resolve disputes regarding interpretations of interconnection agreements arises under Section 252(e)(5). That provision provides that “[i]f a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter . . . and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.” 47 U.S.C. § 252(e)(5). In this case, there has been no state commission proceeding, no failure to act by a state commission and no preemption by the Commission.³ The Commission therefore lacks jurisdiction to interpret Qwest's interconnection agreements.

³ Although the Commission has ruled that, under some circumstances, it has concurrent jurisdiction over complaint actions alleging violation of the terms of interconnection agreements, see, e.g., *Core Communications, Inc. v. Verizon Maryland Inc.*, Memorandum Opinion and

If Qwest believes that Qwest and Verizon have a dispute regarding the interpretation of their interconnection agreements, Qwest should address the dispute through the dispute resolution provisions of those agreements. If Qwest and Verizon do have a dispute and are not able to resolve that dispute informally, Qwest may seek resolution of the dispute in the forum specified in the interconnection agreement (*e.g.*, state commission proceeding, private arbitration). For example, Qwest's interconnection agreement with Verizon for New York provides for resolving disputes initially through an Inter-Company Review Board and then through commercial arbitration before the American Arbitration Association. Other interconnection agreements provide for resolution of disputes by the state public utility commission. Under these agreements, it is the state commission that should interpret the relevant provisions of the parties' interconnection agreement. The FCC may step in only if the state "fails to act" within the meaning of Section 252(e)(5).

Qwest's petition seeks to bypass entirely the dispute resolution provisions of the parties' interconnection agreements. It also seeks to have the Commission interpret contract provisions that are not properly before the Commission in this proceeding. There is therefore no basis for the Commission to consider Qwest's petition for clarification.

2. There Is Nothing For The Commission To Clarify In This Proceeding.

Qwest identifies three separate items it wishes to have "clarified." Two of the items are already clear from the Commission's order and need no further clarification. The third item is not actually a request for "clarification," but rather is a request for the Commission to modify its order, which should be rejected for the reasons set forth below.

(Continued . . .)

Order, 18 FCC Rcd 7962 ¶ 26 (2003) (and Verizon has challenged that ruling), this is not a complaint proceeding before the Commission.

First, Qwest requests that the Commission “clarify” that “Qwest has the right to demand that collocation services for which the price was referenced from a Verizon FCC tariff be provided to it at TELRIC rates.” Qwest Petition at 3. There is no need for such a clarification because the Commission has already determined that “[p]hysical collocation supporting services are available to telecommunications carriers pursuant to section 251, at rates based on TELRIC.” *Order* ¶ 22. Verizon’s collocation rates have been determined by state commissions in TELRIC-based proceedings and those rates are reflected in Verizon’s state collocation tariffs. Qwest will be able to obtain collocation services from Verizon at the tariffed rates set by the state commissions.

Second, Qwest requests that the Commission “clarify” that “Qwest has the right to file a complaint pursuant to Section 208 of the Communications Act for any charges under the Verizon interstate tariffs incorporated into Qwest’s interconnection agreements, which have been imposed inconsistently with the terms of the tariffs or with the Communications Act or the FCC’s rules.” Qwest Petition at 4. Again, there is no need for such a clarification because the Commission has already determined that “Verizon’s billing practices with respect to its federal tariff are not at issue in this proceeding, which is limited to consideration of Verizon’s section 214 application to discontinue federally-tariffed physical collocation service.” *Order* ¶ 24 n.82. In addition, the Commission already determined that “[p]arties wishing to challenge Verizon’s billing practices may file a complaint pursuant to section 208 of the Communications Act, 47 U.S.C. § 208.” *Id.* If Qwest wishes to challenge Verizon’s billing practices under its federal tariffs, it must do so in a separate section 208 proceeding – not here.

Third, Qwest requests that the Commission “clarify” that “Qwest has the contractual right to continue to pay for collocation services at the last posted FCC tariff rate for all collocation

services where the rate from an interstate tariff was incorporated into the interconnection agreement.” *See* Qwest Petition at 4. In addition to asking the Commission to interpret an interconnection agreement in this proceeding, Qwest is asking that the Commission adopt a contract interpretation that is flatly inconsistent with the Commission’s *Order*. Qwest is not requesting a “clarification,” but rather is requesting a change in the Commission’s *Order* by rearguing the same points that it raised in its Opposition and that the Commission rejected.

Qwest opposed Verizon’s application, arguing that “Verizon’s proposed withdrawal of its interstate collocation tariffs would result in an unauthorized and non-consensual modification of [Qwest’s] interconnection agreements with Verizon.” Qwest Opposition at 1 (filed Sept. 18, 2002).⁴ The Commission has already determined that Qwest has no right to continue obtaining collocation support services at the rates previously specified in Verizon’s federal tariffs, even if those rates are referenced in its interconnection agreement. As the Commission explained, “[t]ariffed rates, terms and conditions are not frozen by the existence of an interconnection agreement incorporating their terms.” *Order* ¶ 38. To the contrary, the Commission agreed with Verizon that, by referencing tariffs rather than specifying rates in the interconnection agreements, “the parties were necessarily deferring to the regulatory commissions as the ultimate arbiters of those tariffs,” and noted that interconnection agreements “generally acknowledge that underlying regulatory obligations will change given that they normally incorporate provisions to address changes in law.” *Id.* Indeed, Qwest undoubtedly was well aware of the possibility that the referenced tariff provisions would be discontinued because Qwest does not even offer physical collocation in its federal tariffs. *See Order* ¶ 5 n.18.

⁴ Verizon does not intend to withdraw its federal collocation tariffs. Rather, Verizon plans to modify its tariffs by replacing the current collocation support services provisions with a reference to Verizon’s state collocation tariffs for those services.

Qwest is not seeking clarification of the *Order*, but reconsideration of an issue that was decided against it. Its petition presents no facts or arguments that the Commission has not already considered. If it were a properly filed petition for reconsideration (which it is not), it would have to be rejected as repetitious. *See* 47 C.F.R. § 1.106(b)(3).


Moreover, without a specific contractual agreement giving Qwest what it claims, the “clarification” that Qwest is requesting would effectively reverse the relief the Commission granted in the *Order*. If Qwest could continue obtaining collocation support services under discontinued tariff provisions through its interconnection agreements, it would be as if those tariff provisions were never discontinued as to Qwest. And to the extent Qwest’s interconnection agreements remain available for adoption under Section 252(i), any carrier would be able to obtain those same collocation support services under the discontinued tariff provisions by adopting those same interconnection agreements. There is no reason why these collocation support services should continue to be available under discontinued tariff provisions to those carriers that adopt a particular interconnection agreement.

In any event, there is no harm to Qwest. As the *Order* notes (at ¶ 22), Qwest can obtain DC power at the TELRIC-based rates in Verizon’s state interconnection offerings, which are “affordable to carriers” and a “reasonable substitute to the current federally-tariffed section 201 DC power physical collocation charges.” *Order* ¶ 34. In fact, Verizon demonstrated that carriers’ “collocation costs would decrease if Verizon’s application is granted.” *Id.* ¶ 24. This is because carriers would be able to reduce the number of amps for which they are billed by two-thirds when they convert to the state tariff provisions. *Id.* ¶¶ 24-25.

For these reasons, the Commission should reject Qwest's Petition.

Respectfully submitted,

Michael E. Glover
Edward M. Shakin
Joseph DiBella
Of Counsel


James G. Pachulski, Esq.
TechNet Law Group, P.C.
1100 New York Ave., NW
Suite 365
Washington, DC 20005
(202) 589-0120

December 4, 2003

Attorney for the Verizon telephone
companies

Attachment A: The Verizon Telephone Companies

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies participating in this filing are local exchange carriers affiliated with Verizon Communications Inc. These are:

Verizon Delaware Inc.
901 Tatnall Street
Wilmington, DE 19801

Verizon Maryland Inc.
1 East Pratt Street
Baltimore, MD 21202

Verizon New England Inc.
185 Franklin Street
Boston, MA 02110

Verizon New Jersey Inc.
540 Broad Street
Newark, NJ 07102

Verizon New York Inc.
Corporate Secretary
38th Floor
1095 Avenues of the Americas
New York, NY 10036

Verizon Pennsylvania Inc.
1717 Arch Street
Philadelphia, PA 19103

Verizon Virginia Inc.
600 East Main Street
Richmond, VA 23219

Verizon Washington, DC Inc.
1710 H Street, NW
Washington, DC 20006

Verizon West Virginia Inc.
1500 MacCorkle Avenue, SE
Charleston, WV 25314

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of December, 2003, copies of the foregoing opposition were sent by first class mail, postage prepaid, to the parties listed below.



Jennifer L. Hoh
703-351-3063

Jennifer McKee*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Robert McKenna
Andrew Crain
Qwest Communications
Suite 950
607 14th Street, NW
Washington, D.C. 20005

Jim Lamoureaux
Gary L. Phillips
Paul K. Mancini
SBC Communications
Suite 400
1401 Eye Street, NW
Washington, D.C. 20005

Thomas Jones
Christi Shewman
Counsel for Time Warner
Willkie Farr & Gallagher
1875 K Street, NW
Washington, D.C. 20006

Praveen Goyal
Jason Oxman
Covad Communications
Suite 750
600 14th Street, NW
Washington, D.C. 20005

Jonathan Canis
Ross Buntrock
Brett Freedson
Counsel for ALTS
Kelley Drye & Warren
Suite 500
1200 19th Street, NW
Washington, D.C. 20036

Henry Hultquist
WolrdCom, Inc.
1133 196h Street, NW
Washington, D.C. 20036

Kim R. Scovill
Choice One Communications
100 Chestnut Street
Rochester, NY 14604

Norina Moy
Richard Juhnke
Sprint Corporation
401 9th St., NW
Washington, D.C. 20004

Rodney Joyce
Counsel for NASC
Shook Hardy & Bacon
Suite 800
600 14th Street, NW
Washington, D.C. 20005-2004

Patrick Donovan
Harisha Bastiampillai
Counsel for Allegiance
Swidler Berlin Shereff Friedman
Suite 300
3000 K Street, NW
Washington, D.C. 20007

David Lawson
Paul Zidlicky
Ryan Nelson
Counsel for AT&T
Sidley Austin Brown & Wood
1501 K Street, NW
Washington, D.C. 20005

- + By Facsimile and First Class Mail
- * By Electronic Mail and First Class Mail